1607.5 Rain loads: Rain loads utilized in the combination of loads specified in Section 1613.0 shall be calculated in accordance with Section 8 of ASCE 7 listed in Chapter 35. For roofs with a slope less than one-fourth unit vertical in 12 units horizontal (¼:12), the design calculations shall include verification of the prevention of ponding instability in accordance with Section 8.4 of ASCE 7 listed in Chapter 35. Roofs with provisions for controlled drainage shall be designed in accordance with Section 8.5 of ASCE 7 listed in Chapter 35.

1607.6 Special purpose roofs: Where occupied for incidental promenade purposes, roofs shall be designed for a minimum *live load* of 60 psf (2873 Pa) and 100 psf (4788 Pa) where designed for roof gardens or assembly or educational occupancies.

1607.6.1 Landscaped roofs: Where roofs are to be landscaped, the uniform design *live load* in the landscaped area shall be 20 psf (958 Pa). The weight of the landscaping materials shall be considered as *dead load* and shall be computed on the basis of saturation of the soil.

1607.6.2 Fabric awnings and canopies: Where awnings and canopies are covered with a *fabric* material, such awnings and canopies shall be designed for a uniform *live load* of 5 psf (1168 Pa) as well as for snow *loads* and *wind loads* as specified in Sections 1608.0 and 1609.0.

1607.6.3 Special purpose roofs: Roofs to be utilized for other special purposes shall be designed for appropriate *loads*, or as otherwise approved.

SECTION 1608.0 SNOW LOADS

1608.1 General: Design snow *loads* shall be determined in accordance with this section, or shall comply with Section 7 of ASCE 7 listed in Chapter 35, but the design roof *load* shall not be less than that determined by Section 1607.0.

1608.2 Definitions: The following words and terms shall, for the purposes of this section and as used elsewhere in this code, have the meanings shown herein.

Greenhouse

Continuously heated greenhouse: A production or retail greenhouse with a constantly maintained interior temperature of 50 degrees F. (10 degrees C.) or more during winter months. Such greenhouse shall also have a maintenance attendant on duty at all times or an adequate temperature alarm system to provide warning in the event of a heating system failure. Additionally, the greenhouse roof material shall have a thermal resistance (R) less than 2.0.

Production greenhouse: A greenhouse occupied for growing large numbers of flowers and plants on a production basis or for research, without public access.

Retail greenhouse: A greenhouse occupied for growing large numbers of flowers and plants and having general public access for the purposes of viewing and purchasing the various products. Included in this category are greenhouses occupied for educational purposes.

1608.3 Ground snow loads: Ground snow *loads* to be utilized in determining the design snow *loads* for roofs are given in Figures 1608.3(1), 1608.3(2) and 1608.3(3) for the contiguous United States. In some areas the amount of local variation in snow *loads* is so extreme as to preclude meaningful mapping. Such areas are not zoned in these figures but are shown in black. In other areas, the snow *load* zones are meaningful, but the mapped values are not intended to be utilized for certain geographic settings, such as high country, within these zones. Such areas are shaded in as a warning that the zoned value for those areas applies only to normal settings. Ground snow *loads* for shaded areas in high country and those areas shown in black shall be determined by the local jurisdiction requirements.

1608.4 Flat-roof and low-slope snow loads: The snow *load* on unobstructed flat roofs and roofs having a slope of 30 degrees (0.2 rad) or less (P_f) shall be calculated in pounds per square foot using the following formula:

$$P_f = C_e I P_g$$

where:

C_e = Snow exposure factor determined from Table 1608.4.

I = Snow *load* importance factor determined from Table 1609.5.

P_g = Ground snow *load* expressed in pounds per square foot, determined from Figures 1608.3(1), 1608.3(2) or 1608.3(3).

Exception: The flat-roof snow *load* on continuously heated greenhouses shall be calculated utilizing the following formula

$$P_f = C_{tg} C_e I P_g$$

where the thermal factor for greenhouses (C_{tg}) = 0.83.

Table 1608.4
SNOW EXPOSURE FACTOR (C_e)

Roofs located in generally open terrain extending one-half mile or more from the structure	0.8
Structures located in densely forested or sheltered areas	0.9
All other structures	0.7

1608.5 Sloped roof snow loads: Snow *loads* acting on a sloping surface shall be considered to act on the horizontal projection of that surface. The sloped roof snow *load* (P_s) on roofs having a slope greater than 30 degrees (0.52 rad) shall be calculated using the following formula:

$$P_s = C_s P_f$$

where:

P_f = Flat-roof snow *load* expressed in pounds per square foot.

The roof slope factor (C_s) is determined by the following formula:

$$C_s = 1 - \frac{(\alpha - 30)}{40}$$

where α is the slope of the roof expressed in degrees.

Exception: The roof slope factor (C_s) for continuously heated greenhouses is determined by the following formula:

$$C_s = 1 - \frac{(\alpha - 15)}{55}$$

Florida League of Cities, Inc.
201 West Park Avenue
Post Office Box 1757
Tallahassee, FL 32302-1757
Telephone (904) 222-9684
Suncom 278-5331
FAX (904) 222-3806

April 16, 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	IB Docket No. 95-59
	DA 91-577
Preemption of Local Zoning Regulation of Satellite Earth Stations	45-DSS-MISC-93

PETITION FOR RECONSIDERATION

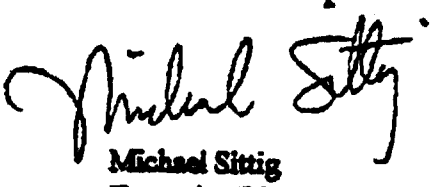
On behalf of the 396 municipal governments of Florida, the Florida League of Cities respectfully petitions the Commission to reconsider that portion of its rule adopted by order herein (FCC 96-78), released March 11, 1996, as would put in doubt the validity and enforceability of municipal building codes requiring that exterior antennae be safely constructed and maintained.

In Florida, we are very conscious of the extensive damage inflicted on structures and objects, such as antennae mounted on roofs and walls of buildings and antennae installed on the ground in populated areas, as evidenced in storms like Hurricanes Andrew (1992), Erin and Opal (both 1995).

Municipal building codes in Florida have been revised to meet this demonstrated danger to the public's safety. It serves no business for these 396 cities to come to Washington to defend their building codes. For the Commission to impose additional burdens on the cities' enforcement of their codes in this era of municipal fiscal stringency is plainly contrary to the public interest in the safety of persons and property.

The ill-conceived presumption against the codes' enforceability should be reversed.

Respectfully Submitted,



Michael Sittig
Executive Director

(b) A bay window which is not more than ten feet wide may extend three feet into a required front or rear yard.

(c) Unenclosed porches, terraces, balconies and decks may extend five feet into a required front yard, five feet into a required side yard, and 12 feet into a required rear yard. "Unenclosed" shall mean no side enclosure, other than railings, that is more than 18 inches in height, exclusive of screens.

(d) The ordinary projections of chimneys and flues may extend into a required yard.

(e) Mechanical or HVAC equipment may be located in a required side or rear yard, but on corner lots shall not project beyond the required side yard on the street side of the corner lot.

(f) The front, side and rear yard requirements of this chapter shall not apply to any necessary retaining wall or required screening fence.
(Ord. No. 862, 10-10-91)

Sec. 21-608. Street frontage for lots.

Every building that is erected shall be located on a lot having its principal frontage on a public street; on a private street which existed prior to January 1, 1966, and which has been recorded in the clerk's office of the circuit court of the city and the County of James City; or on a private street which is shown on a subdivision plat or a planned development plan which has been duly approved by the city and which has been recorded in the aforesaid clerk's office.
(Ord. No. 862, 10-10-91)

Sec. 21-609. Satellite dishes and antennae.

(a) *Satellite dishes.*

(1) In residential zoning districts, satellite dishes shall be allowed as follows:

a. Satellite dishes with a diameter of 18 inches or less shall be permitted by right, and shall be limited to being located in side or rear yard areas, or attached to the side or rear wall of a building, or to the roof of a building facing the side or rear yard. No such satellite dish shall be located in a front yard area or attached to the front wall or roof of a building facing the front yard, or located in a side yard on the street side of a corner lot or attached to the side wall or roof of a building facing the street side of a corner lot. In no event shall the satellite dish be visible from the Colonial Williamsburg historic area CW.

b. Satellite dishes with a diameter of more than 18 inches shall be permitted as a special exception requiring approval of the board of zoning appeals in accordance with section 21-97(f). In its consideration of such applications, the board may impose such conditions as it deems necessary to protect the

public health, safety and general welfare and to protect the character of adjacent properties and those immediately across the street, and particularly the character of the Colonial Williamsburg historic area CW. In no event shall a satellite dish be visible from the Colonial Williamsburg historic area CW. No satellite dish shall exceed ten feet in diameter. A satellite dish shall be located at ground level and only in a rear yard. The bottom of a satellite dish shall be no higher than two feet above the adjacent natural grade, and the top of a satellite dish shall be no higher than 12 feet above the adjacent natural grade. The satellite dish shall be set back at least three feet from any side property line and five feet from any rear property line, and on corner lots shall not project beyond the required side yard on the street side of the corner lot. All satellite dishes shall be of a subdued color to blend with the landscape. Satellite dishes shall be screened from view from adjacent properties by new or existing plant material, obscuring fence or buildings on all sides except the side oriented to the line of reception. The color of the satellite dish and the type of screening shall be approved by the board of zoning appeals.

c. Satellite dishes located in the Architectural Preservation AP and Corridor Protection CP Districts shall be approved by the architectural review board, in accordance with article IX, if they are visible from a public street.

(2) In any nonresidential zoning district, satellite dishes shall be allowed as follows:

a. Satellite dishes with a diameter of 18 inches or less shall be permitted by right, and shall be limited to being located in side or rear yard areas, or attached to the side or rear wall of a building, or to the roof of a building facing the side or rear yard, or located on top of a flat-roofed building. No such satellite dish shall be located in a front yard area or attached to the front wall or roof of a building facing the front yard, or located in a side yard on the street side of a corner lot or attached to the side wall or roof of a building facing the street side of a corner lot. In no event shall the satellite dish be visible from the Colonial Williamsburg historic area CW.

b. Satellite dishes with a diameter of more than 18 inches shall be located only at ground level in a rear yard or on top of a flat-roofed building, and shall not exceed 12 feet in diameter.

1. If located a ground level, the satellite dish shall meet all requirements, other than size, listed in section 21-609(a)(1), and must be approved as a special exception by the board of zoning appeals, in accordance with section 21-97(f).
2. If located on top of a flat-roofed building, the satellite dish shall be set back from the edge of the roof a distance equal to at least two times the height of the satellite dish. The top of the satellite dish shall be no

higher that 12 feet above the roof. The satellite dish shall be screened on all sides except the side oriented to the line of reception by an element of the building or by a separate, permanently installed screen harmonizing with the building in material, color, size and shape. Screening shall be approved by the architectural review board when required by Article IX, Architectural Review.

c. Satellite dishes located in the Architectural Preservation AP and Corridor Protection CP Districts shall be approved by the architectural review board in accordance with article IX, if they are visible from a public street.

(3) If a useable satellite signal cannot be obtained by locating or sizing a dish antenna in accordance with the above-listed criteria, an application for a special exception may be made to the board of zoning appeals. The board of zoning appeals may authorize an exception to the placement and/or size limitations in order to provide for the reception of a useable signal. In its consideration of such applications, the board may impose such conditions as it deems necessary to protect the public health, safety and general welfare and to protect the character of adjacent properties and those immediately across the street, and particularly the character of the Colonial Williamsburg historic area CW. In no event shall a satellite dish be visible from the Colonial Williamsburg historic area CW.

(4) No lettering or advertising messages shall be painted on or attached to any satellite dish greater than 18 inches in diameter.

(b) *Antennae.*

(1) Radio and television antennae for home use, when attached to the main building, shall be exempt from height requirements of this chapter.

(2) Towers supporting radio and television antennae shall not exceed the height allowed for accessory buildings in the zoning district in which they are located. The board of zoning appeals may approve, as a special exception in accordance with section 21-97(f), an increase in the height of the tower up to the maximum height allowed for main structures in the zoning district in which it is located. In no event shall the tower be visible from the Colonial Williamsburg historic area CW.

(Ord. No. 862, 10-10-91; Ord. No. 3-95, 3-9-95)

Sec. 21-610. Screening requirements.

(a) *Mechanical equipment.*

(1) Ground- and roof-mounted equipment shall be screened from view from a public street or other public place, from adjacent lots in a residential district, and from an adjacent lot containing a residential use, by one or more of the following:

a. An element of the building;

CITY OF
WILLIAMSBURG
MEMORANDUM

TO: **Mayor and City Council**

DATE: **January 6, 1995**

SUBJECT: **Ordinance #3-95: 18 inch Satellite Dishes**

Competition in the telecommunications sector (cable, telephone, satellite communications, etc.) is one key to future service improvements at a fair price. The city needs to look at its regulations with eye toward removing impediments to the functioning of the telecommunications marketplace.

A letter received from James W. Bateman, Sr., a member of the City's Cable Advisory Committee, (attached) suggesting that the City rethink how its restrictions on small satellite dishes, fits into this pro-competition approach.

The Zoning Ordinance now requires that any satellite dish in residential districts be approved by the Board of Zoning Appeals. The attached ordinance would modify this restriction and allow 18 inch dishes or less by right in side and rear yards, or attached to the side or rear of the building, provided that they are not visible from the street. In non-residential districts, 18 inch dishes would also be allowed by right in side and rear yards and on flat roofs, provided that they are not visible from the street. Allowing these small dishes by right would make the option of receiving direct broadcast satellite television in lieu of cable more viable.

Staff contact: Reed Nester

Recommendation: That City Council refer the attached ordinance to the Planning Commission for review and recommendation. Since the attached ordinance is an amendment to the Zoning Ordinance, public hearings will be required by Planning Commission and City Council.

Jackson C. Tuttle
City Manager

CITY OF
WILLIAMSBURG
MEMORANDUM

TO: **Mayor and City Council**

DATE: **February 27, 1995**

SUBJECT: **PCR #01-95**
Amendment of the Zoning Ordinance by the revision of Sec. 21-609(a), Satellite Dishes and Antennae, to allow satellite dishes with a diameter of 18 inches or less by right.

City Council, at its January 12th meeting, referred to Planning Commission for review and recommendation a proposal to amend the City's Zoning Ordinance by revising the satellite dish regulations [Sec. 21-609(a)] to allow dishes with a diameter of 18" or less by right. The present regulations require Board of Zoning Appeals approval in residential districts, with a maximum size of ten feet.

The Commission has modified the suggested ordinance as forwarded by City Council: language has been added to subsections (a)(1)a. and (a)(2)a. allowing satellite dishes to be located on the roof of a building facing a side or rear yard; and provisions have been added as subsections (a)(1)c. and (a)(2)c. noting that satellite dishes located in the Architectural Preservation (AP) and Corridor Protection (CP) districts, and visible from a public street, must be approved by the Architectural Review Board. If a satellite dish in the AP or CP district is not visible from a public street, ARB approval is not required. If a satellite dish is not located in the AP or CP district, and the dish is located in accordance with subsections (a)(1)a. and (a)(2)a., it can be visible from a public street.

PLANNING COMMISSION RECOMMENDATION

The Planning Commission held a public hearing on these changes on February 15th, and no one spoke at the public hearing either for or against the changes. The Commission unanimously recommended to City Council that the Zoning Ordinance be amended to allow satellite dishes of 18" diameter or less by right, in accordance with the attached ordinance.

Reed T. Nester

Reed T. Nester
Planning Director

[P:\MCASES\PCR01-95.MO3]

CITY OF DALLAS

APR 15 1996

April 12, 1996

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Petition for Reconsideration

In the Matter of Preemption of Local Zoning Regulation of Satellite Earth Stations, IB Docket No. 95-59, DA 91-577, 45-DSS-MSC-93

Dear Sir or Madam:

Enclosed herewith please find an original and twelve copies of the Local Communities' Petition for Reconsideration in the above referenced matter. Please file stamp one copy and return to the undersigned in the enclosed envelope. Should you have any questions, I may be contacted at (214) 670-3478.

Sincerely,

Scott Carlson
Assistant City Attorney
City of Dallas

On behalf of the Local Communities

Enclosure

Petition for Reconsideration

submitted by

the Cities of Dallas, Texas; Arlington, Texas; Austin, Texas;
Fort Worth, Texas; Knoxville, Tennessee,
the National Association of Counties and
the United States Conference of Mayors

for reconsideration of the rule adopted
at 27 C.F.R. § 25.104 (a) through (e)

Summary

The Local Communities, composed of organizations representing local governments nationally and local governments in Texas and Tennessee, request that the adopted rule be reconsidered in light of Congressional instruction in the Telecommunications Act of 1996 ("the Act"), recent Supreme Court decisions curtailing the exercise of Commerce Clause power and the traditional judicial deference which is given to local health and safety regulations.

The Local Communities assert that the rule as developed is more expansive than intended by Congress. The adopted rule covers services which are explicitly excluded from the rulemaking authority. The Commission should defer to the clear expression of Congressional will and intent and limit the application of the rule to those services intended by Congress. Congress, in the most sweeping pronouncement on telecommunications in a half a century, delineated those services which it considered appropriate for rulemaking. Many potential reasons exist for the apparent restraint shown by Congress but the one certainty is that a much more limited rule was envisioned by Congress.

The Local Communities contend that the adopted rule does not reflect the Congressionally directed standard. Congress indicated a standard of impairment should apply. The rule adopted by the Commission simply presumes all State and local government regulations affect the installation of satellite dishes. There is no actual finding of impairment by a particular local

government regulation.

The Local Communities contend that the adopted rule exceeds recently expressed limitations on federal regulatory authority. The Supreme Court recently curtailed the exercise of Commerce Clause power in areas reserved for the exercise of traditional local police power. The Court noted that the regulated activity must "substantially affect" interstate commerce. While the record is replete with alleged instances and allegations of abuse, in reality, compared to the existing number of subscribers and the exponential growth and forecasts for the industry, the regulated activity, local zoning and other codes, do not substantially affect interstate commerce. The Commission has substituted its judgment for that of the state and local government officials in health and safety matters, traditional areas of local police power and judicial deference, and precluded enforcement of such regulations absent Commission approval.

Finally, a per se presumption of invalidity of local ordinances turns the traditional judicial deference which state and local government health and safety regulations enjoy on its head. It is contrary to federalism principles and the review standards which the Commission's own rules enjoy.

Table of Contents

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.

In the Matter of	)	
	)	IB Docket No. 95-59
Preemption of Local Zoning Regulation	)	DA 91-577
of Satellite Earth Stations	)	45-DSS-MSC-93
	)	

Petition for Reconsideration

The City of Dallas, Texas by its attorneys and the Cities of Arlington, Texas; Austin, Texas; Fort Worth, Texas and Knoxville, Tennessee and the United States Conference of Mayors and the National Association of Counties with their consent (herein referred to collectively as the "Local Communities") hereby file this Petition for Reconsideration pursuant to 47 C.F.R. § 1.429 and requests reconsideration of the adopted rule related to preemption of State and local government satellite earth station regulations found at 47 C.F.R § 25.104 (a)-(e), adopted February 29, 1996 pursuant to Report and Order and Further Notice of Proposed Rulemaking, IB Docket No. 95-59, DA 91-577, 45-DSS-MSC-93 ("NPRM") and in support thereof would show the following:

I.

The Adopted Commission Rule Should be Revised to Reflect Congressional Intent Expressed in Section 207 and the Legislative History

A. Congress Directed a Much More Limited Rule Than the One Adopted by the Commission

The rule adopted by the Federal Communications Commission ("the Commission") does not reflect Congressional intention expressed in the Telecommunications Act of 1996 ("the Act). [1] With passage of the Act, Congress directed the Commission to promulgate regulations addressing State and local regulations which "impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multichannel, multipoint distribution service, or direct broadcast satellite services."[2] The adopted rule is much broader and more expansive than Section 207 of the Act authorized or Congress intended. This rule should be altered to match Congressional directives.

The Act represents the most sweeping legislative pronouncement on telecommunications in nearly half a century. Section 207 represents the only instructions to the Commission to promulgate regulations addressing state and local regulations related to over-the-air reception devices. The statute and legislative history are void of any other authority or intention to cover services other than the ones enumerated in the statute or legislative history. Nothing in the Act addresses any authority the Commission may have

---

1 Pub. L. No. 104-104, 110 Stat. 56 (1996).

2 Section 207 of the Act.

possessed prior to the Act to preempt local zoning regulations[3]; however, Congress very specifically identified the relevant services for Commission's rulemaking authority. Report language indicates that the rulemaking authority is limited to "zoning laws, regulations... contrary to this Section."[4] This reference to "this Section" addresses the listed services which Congress intends for the Commission to impact.

The adopted rule expands well beyond the services included within the Section 207 rulemaking directive to include services Congress did not want included. The adopted Commission rule covers transmission antennas, C-band antennas and lower power direct broadcast satellite services.[5] C-band services were not part of the Commission's mandate.[6] Among direct broadcast satellite services, only higher power direct broadcast satellite services were contemplated by Congress in the Section 207 authority delegated to the Commission.[7] Congress did not include lower power direct broadcast satellite services or Fixed Satellite Service ("FSS") within its regulatory

---

[3] NPRM ¶ 16. See also, NPRM ¶ 60, 61 where the Commission makes a similar assertion of authority with regard to VSAT, C-band and lower power DBS service providers.

[4] House Commerce Committee Report, H. Rep. 104-204 at 124 ("the Report").

[5] NPRM ¶ 16.

[6] House Commerce Committee Report, H. Rep. at 124 ("the Report"). "Thus, this section does not prevent the enforcement of Sate or local statutes and regulations, or State or local legal requirements or restrictive covenants or encumbrances that limit the use and placement of C-band satellite dishes."

[7] H. Rep. 104-204 at 124.

directions to the Commission. Finally, the text of Section 207 itself is directed to "... regulations which impair reception..." The provision does not target "reception and transmission."

The Commission notes that Congress did not expressly preclude the Commission from enforcing its preemption rule to services other than DBS.[8] On the other hand, Congress has expressed no affirmative authority to cover services other than DBS. The Local Communities contend that Congress, by including the words "contrary to this Section" in the Report, intended to limit the Commission to regulations which addressed the delineated services.

An approach more aligned with Congressional intent begins with interpretation of Section 207 in light of Congressional notice of the inception of rulemaking for the adopted rule.[9] As noted, Congress did not include the additional services incorporated by the Commission in its Section 207 directive. Consequently, Congress did not desire the Commission to enact a broader regulation By implication, in choosing another, more limited and restricted approach than the Commission proposed, Congress rejected the Commission's expansive approach. The only thing that is for certain is that

---

8 NPRM ¶ 61.

9 Preemption of Local Zoning Regulation of Satellite Earth Stations, 10 F.C.C. Rcd. 6982 (1995) adopted April 27, 1995, released May 15, 1995 ("Notice"). The House Finance and Telecommunications Subcommittee considered H.R. 1555 on May 17, 1995. The House Commerce Committee considered H.R. 1555 on May 25, 1995. Substantial revisions of the H.R. 1555 were made between the time the bill was reported from Committee and the time the whole House took up the bill. All represented opportunities for the House to adopt the Commission approach. It did not.

Congress spoke in Section 207 of regulations directed at certain satellite dish services and in doing so omitted C-band services, lower power direct broadcasting services and transmission matters.

The Commission notes that it does not believe that Congress intended for FSS to "face regulatory hurdles" not shared by DBS.[10] Congress made no such declaration or even inference in Section 207 or the Report. To the contrary, Congress expressed a clear intention to cover only the higher power DBS.[11] At least one reason could center on the smaller and less obtrusive dish. Congress was demonstrating a greater restraint and deference for local regulations in limiting its focus to the smaller dishes. Other reasons rest on finding that no interstate commerce interests are implicated by State and local regulations covering FSS services.

The same analysis applies to C-band type services. The Report plainly expresses that Congress did not intend to include C-band satellite dishes within its rulemaking instruction to the Commission.[12] The Local Communities believe that Congress has spoken clearly on this point and coverage of C-band satellite dishes should be eliminated from the adopted rule.

---

[10] NPRM ¶ 60.

[11] The Report at 124. "The Committee notes that the "Direct Broadcast Satellite Service" is a specific service that is limited to higher power DBS satellites.

[12] H. Rep., 104-204 at 124. "Thus, this Section does not prevent the enforcement of State or local statutes and regulations, or State or local legal requirements, or restrictive covenants or encumbrances that limit the use and placement of C-band satellite dishes."

Finally, Section 207 applies only to restrictions which "...impair a viewer's ability to receive video programming." Again, the Commission's proposed rule extends beyond the Congressional instruction for at least two reasons. First, Section 207 is limited to regulations which impair reception. To the extent the adopted rule targets transmission antennas, it is misguided. Second, the Commission mandate under Section 207 covers only video programming. While some VSAT services may have been impacted by local regulations,[13] they are not used to deliver video programming.

The Local Communities disagree with the Commission conclusion that this language does not address its limited, preexisting preemption.[14] At the minimum, Congress has not directed an expansion of the limited, preexisting preemption which the new rule adopts with respect to lower power direct broadcast satellite services, C-band services and transmission matters.

B. Congress Did Not Mandate The Preemption Rulemaking And Presumption Approach Based On Satellite Dish Size Adopted By The Commission

Congress endorsed development of regulations based on impairment, rather than a presumption of invalidity of all local regulations which apply in

---

[13] NPRM ¶ 61

[14] NPRM ¶ 61. The Commission construes Section 207 as an expression but not the definitive expression of Congressional will regarding C-band satellite dishes. The Commission makes similar statements regarding FSS (see NPRM ¶ 60).

some manner to satellite dishes.[15] The Commission, in the adoption of the presumption approach, only presumes impairment. There is no actual finding of impairment for a particular complainant. Similar to the different services which Congress directed covered and those the Commission has chosen to cover, the Commission has adopted a different approach to the standard of regulation than that dictated by the Congress. Yielding to the delegated authority granted by Congress and the legislative intention of Congress, the Commission rule should not expand its rule to create a per se presumption based on size and denial of enforcement.

II.

The Commission's Authority To Intrude Into The Intensely Local Province Occupied By Local Zoning, Health And Safety Codes Is Circumscribed By Recent Supreme Court Action

The Commission correctly points out its mandate under federal law and case law upholding the exercise of its power in the pursuance of this mandate.[16] Yet, the Commission fails to discuss the most recent Commerce Clause analysis related to State and local issues by the Supreme Court. In U.S. v. Lopez[17], the Supreme Court struck down the federal gun free school zone law. Recognizing that Lopez is a criminal case and the Commission is dealing

---

[15] Section 207 of the Act.

[16] NPRM ¶ 10 through 14.

[17] U.S. v. Lopez, - US-, 115 S. Ct. 1624, 131 L. Ed. 2d 626 (1995).

in the traditional economic arena entitled to judicial deference, the Lopez Court still provides lessons which are instructive. For the first time in many years, the Court curtails the exercise of federal power under the Commerce Clause. In reaching its decision, the Court noted areas of traditional local control and federalism principles and analyzed the expansive reach contended by the government. The Court refused to "....convert congressional authority under the Commerce Clause to a general police power of the sort retained by the state."[18]

Although it is possible for federal regulations to preempt state and local law, the Commission surely can not do what the Congress itself can not do. The local regulations at issue in the satellite preemption matters - zoning, land-use, building and other codes - are just those codes which represent an exercise of local government police powers. In essence, the Commission, in substituting its judgment for that of the local governments and assuming these police powers, is proceeding upon the path about which the Court expressed grave misgivings and was unwilling to tread. In this substitution of judgment, the Commission is functioning as both a local zoning board and a local building official issuing permits.

The Lopez Court concluded that the proper test or review of Congressional regulatory authority requires an analysis of whether the

---

[18] 131 L.Ed. 626, 643.

regulated activity "substantially affects" interstate commerce.[19] The Local Communities question whether the notice of 1000 complaints[20] scattered over the country in a time of exponential growth for the direct broadcast satellite industry demonstrates or even suggests that the regulatory activities represented by zoning, building and other local government codes "substantially affects" interstate commerce and justifies the far reaching approach adopted in the rule. The Commission, noting that its evidence relates to only a small percentage of local jurisdictions and based on the record which reflects the complaints cited by industry and bald generalizations[21] finds that a national problem exists.[22] Based on this finding, the Commission adopts the rule at issue which is unprecedented in its scope and effect. While Congress directed the Commission to implement rulemaking, the Local Communities contend that Congress did not have in mind the expansive breadth and scope which the adopted rule embodies. A rule, which yields to the Congressional mandate and recognizes the primary functions of local governments, would be much more in accord with the Lopez decision.

The Local Communities note that the direct broadcast satellite business

---

19 131 L. Ed.2d 626, 656.

20 NPRM ¶ 21.

21 E.g. NPRM ¶ 21 and 19.

22 NPRM ¶ 23.

has grown exponentially over the last several years. Forecasts of 5.6 million subscribers betweer 1994 and 2000 were made by Wall Street analysts.[23] One recent publication indicates that there are currently 2.6 million subscribers. [24] At least one direct broadcast satellite programmer enlisted over one million subscribers in slightly more than a year.[25] Other providers exceeded forecasts for sales in 1994 and upped forecasts for 1995.[26] Assuming all complaints received by the Commission are meritorious, all numbers are accurate, and the number of subscribers is truly 2.6 million, the complaints amount to .05% of installations. In light of the federalism principles and deference to local matters announced by the Lopez court, the Local Communities question whether the national interest at stake, as demonstrated by these statistics, demands the sweeping, dramatic rule adopted by the Commission. Industry has failed to demonstrate through actual complaints or instances of overreaching, a pervasive national problem requiring a per se presumption of preemption of all local regulations adopted by the Commission. Indeed, industry representatives have stated that problems with local zoning

---

[23] Broadcasting and Cable, June 6, 1994 at 55

[24] Doug Abrahms, *Mayors dish out objections to satellite-TV zoning ban*, Washington Times, April 3, 1996 at B8.

[25] Broadcasting and Cable, November 6, 1995 at 106.

[26] HFN, the Weekly Journal for the Home Furnishing Network, November 16, 1995, at 216. The article notes that nearly 600,000 units were sold. Estimates were nearly 400,000. Projections for 1995 were raised from 1.2 million to 1.5 million.

currently does not exist.[27] In the absence of such demonstrated evidence of substantial affects justifying the broad adopted rule, the Commission should adopt a rule which is more narrowly tailored and address only the services directed by Congress.

III.

The Rulemaking Should Not Require Local Governments to Justify the Inconsequential Impacts of Their Regulations

The Commission asserts that shifting of the burden of persuasion to local governments to justify their regulations is really not determinative of the outcome of the rulemaking.[28] Instead, the Commission notes that local governments have failed to demonstrate how their regulations do not impair reception, states that it is replacing state and local law, and that state and local

---

[27] Doug Abrahms, *Mayors dish out objections to satellite-TV zoning ban*, Washington Times, April 3, 1996, at page B8. A representative of the satellite dish industry, Paul Bross, editor of Satellite News, states, "The growth of this industry is at a critical point. Zoning [restrictions] are not a problem now, but down the road they could be. [Emphasis added] at B12.

[28] The Commission notes in ¶32 that reversal of the standard of persuasion is not determinative. Yet, it is instructive that the federal courts apply exactly the opposite standard to health and safety regulations enacted by local governments. E.g. Pennington v. Vistron Corp., 876 F.2nd 414 (5th Cir. 1989), "Presumption against preemption applies to state or local regulation on matters of health and safety" at 417, *see also* Hillsborough County v. Automated Medical Laboratories, 471 U.S. 707, 715, 105 S. Ct. 2371, 2376, 85 L.Ed.2d 714 (1985). Interstate Towing Ass'n, Inc. v. City of Cincinnati, 6 F.3d. 1154 (6th Cir. 1993) where the court in considering towing regulations which were enacted for safety, minimum levels of service and consumer protection reasons states, "Such concerns have consistently been regarded as legitimate, innately local in nature and presumptively valid, even where regulations enacted to address those concerns have an impact on interstate commerce." at 1163. *See also* Pike v.Bruce Church, Inc. 397 U.S. 137, 142, 90 S. Ct. 844, 847, 25 L.Ed.2d 174 (1970).

governments, under the proper circumstances may appeal or seek a waiver from the Commission.[29] This approach turns on its head the traditional judicial deference which State and local government health and safety regulations have enjoyed. The adopted rule is predicated on this disregard for the traditional deference. A rule which per se presumes the invalidity of a state or local regulation can not at the same time exhibit the traditional presumption in favor of those rules.

The Commission's adopted rule represents a substantial departure from the preexisting Commission rule.[30] Formerly, the Commission did not substitute its judgment for that of state and local government officials in the matter of health and safety. The former rule allowed for enforcement. There was no per se presumption established of all local regulation which touch satellite dishes of a certain size. The adopted preemption standard represents a reversal of the standard to which the regulations of the Commission itself are entitled when under review by a court. The Local Communities respectfully suggest that the Commission follow established federal and state judicial precedent in development of a rule which will reflect the traditional deference which state and local safety and health regulations have enjoyed in the federal courts.

---

[29] NPRM ¶ 32.

[30] Notice ¶ 4. "We [the Commission] also recognized, however, that zoning regulations have traditionally been enacted and administered by local authorities pursuant to the states' police powers. This led us to adopt only a limited preemption of local zoning restrictions."